

Article IV Grants Administration

1. Grant funds, may not be used for any purpose other than that for which they are awarded. Unobligated funds shall carry over to the following Fiscal Year for reallocation to the applicable Grant, unless otherwise provided in this Agreement or the Compact, as amended.
2. All terms and conditions imposed on the Government of the Republic of the Marshall Islands shall apply to Sub-Grantees.
3. The President of the Republic of the Marshall Islands, acting on behalf of the national and local governments of the Republic of the Marshall Islands, shall be responsible for all certifications to the Government of the United States pursuant to this Agreement.
4. Grant Conditions:
 - (a) General terms and conditions of Grants shall include conformance to the plans, strategies, budgets, project specifications, architectural and engineering specifications, performance standards, and other criteria developed by the Government of the Republic of the Marshall Islands and concurred with by the Committee.
 - (b) After consultation with the Government of the Republic of the Marshall Islands, the Government of the United States may recommend that the Committee attach certain terms and conditions to an annual allocation to assist the Government of the Republic of the Marshall Islands to achieve the goals of the Grant.
 - (c) Other special conditions or restrictions may be required by the Government of the United States during the course of the Grant year if it determines that the Government of the Republic of the Marshall Islands or a Sub-Grantee has a history of unsatisfactory performance, is not financially stable, has not conformed to terms and conditions of previous awards, or is otherwise not responsible. Special conditions or restrictions may include:
 - (1) Payment on a reimbursement basis;
 - (2) Withholding authority to proceed to the next phase of the Grant until receipt of evidence of acceptable performance within a given period;
 - (3) Requiring additional, more frequent and/or detailed financial reports;
 - (4) Providing for additional project monitoring;
 - (5) Requiring the acquisition of technical or management assistance; and

(6) Requiring additional Prior Approvals.

(d) If the Government of the United States imposes such conditions as stated above in clause (c), it shall immediately notify the Government of the Republic of the Marshall Islands in writing of its intent. This notification shall include a description of the:

- (1) Nature of the special conditions or restrictions;
- (2) Reasons for imposing them;
- (3) Corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and,
- (4) Method of requesting reconsideration of the conditions and restrictions imposed.

(e) If the explanation from the Government of the United States or any subsequent discussion between the Government of the United States and the Government of the Republic of the Marshall Islands is disputed, the Government of the Republic of the Marshall Islands may submit an Appeal in writing to the Implementing Agency of the Government of the United States. This Appeal must be initiated within 30 days of the receipt of a Grant award or a notification of intent to impose special conditions. In such case, the Appeal for reconsideration will be handled in accordance with established administrative procedures of the Implementing Agency.

5. Payment Procedures:

(a) Establishment of Account. The Government of the Republic of the Marshall Islands shall establish an account with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Republic of the Marshall Islands, in either case for the purpose of receiving payments of Grant funds pursuant to the Compact, as amended, and this Agreement. The Government of the Republic of the Marshall Islands shall provide the Government of the United States with wiring instructions with respect to such account.

(b) Advance Payment. In general, payments for Operational Grants under the Compact, as amended, shall be made monthly, as set forth below, in advance. The amounts of the payments will match the percentage of the Fiscal Year to be completed during the advance period, or may be based on an outlay analysis performed by the Government of the Republic of the Marshall Islands and concurred with by the Government of the United States.

- (1) The first payment of each Fiscal Year for Operational Grants will be sufficient to fund financial requirements for the first two months

of each Fiscal Year. All other payments will be made on or about the first Business Day of each month (except that no payment shall be made on the second month of each Fiscal Year) to fund financial requirements of that month.

- (2) Advances for Accrued Expenditures. All infrastructure projects and projects that are not funded by Operational Grants will be paid on the basis of Accrued Expenditures, provided the Government of the Republic of the Marshall Islands maintains procedures to minimize the time elapsing between transfer of funds and their disbursement.

(c) Breach of Terms and Conditions:

- (1) Withholding of Payments. The Government of the United States may Withhold payments, including reimbursements, with respect to any Grant if the Government of the Republic of the Marshall Islands is in breach of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States. The amount of the Withholding shall be proportional to the breach of the term or condition. If the Government of the Republic of the Marshall Islands disputes the Withholding of payments with respect to a Grant, it may submit an Appeal in writing to the Implementing Agency of the Government of the United States. That Appeal must be initiated within 30 days of the receipt of notice of Withholding of payment. In such case, the Appeal for reconsideration must be handled in accordance with established administrative procedures of the Implementing Agency. Cash withheld for failure to comply with Grant terms shall be released upon subsequent compliance, provided that such Grant has not been revoked pursuant to any applicable Appeal or dispute resolution proceeding.
- (2) Suspension. Notwithstanding any other provision of this Agreement, the Government of the United States may suspend payment with respect to any or all sectors and areas in the event that the Government of the United States reasonably determines that the Government of the Republic of the Marshall Islands has engaged in a pattern of gross negligence, willful misconduct or material breach of terms and conditions with respect to the use of financial assistance provided under the Compact, as amended, provided that such determination is made on a sector by sector or area basis. If the Government of the Republic of the Marshall Islands disputes the Suspension of Grant assistance under this subparagraph, it may seek to resolve the matter through the conference and dispute resolution procedures set forth in Article II of Title

Four of the Compact, as amended. The Suspension shall stand unless otherwise determined through the conference and dispute resolution process of Article II of Title Four of the Compact, as amended.

Article V
Pre-Award Requirements

1. Planning As a Requirement of Economic Assistance:

(a) No later than 90 days after the entry into force of Title Two of the Compact, as amended, and thereafter at intervals no greater than three years from that date, the Government of the Republic of the Marshall Islands shall submit to the Government of the United States a "Medium-Term Budget and Investment Framework" pursuant to section 211(f) of Title Two of the Compact, as amended, (the "MTBIF"). The MTBIF shall be strategic in nature, identify the multi-year priorities, budget and implementation plan of the Government of the Republic of the Marshall Islands to promote economic advancement and budgetary self-reliance, and contain the goals for the sectors described in section 211(a) of the Compact, as amended, for the assistance described in section 211(b) thereof, and for the Supplemental Education Grant. Each of the sectors or areas so named, or other sectors as agreed by the Committee, shall be accorded specific treatment in the framework. Such sector or other strategies and goals shall be continuously reviewed and updated through the annual budget process. Those portions of the MTBIF that contemplate use of United States Grant funds require the concurrence of the Committee.

(b) United States Grant assistance shall be made available in accordance with annually updated MTBIF implementation steps developed by the Government of the Republic of the Marshall Islands in conjunction with its budget process. The Government of the Republic of the Marshall Islands shall submit its proposal for the division of annual economic assistance among the sectors or other areas described in Article II of this Agreement and, for each sector or area, expenditures and related performance goals and measures for the next Fiscal Year to the Government of the United States for review no later than 90 days prior to the beginning of the Fiscal Year. The implementation plan shall also address which activities are to be funded by the Supplemental Education Grant. Annual Grant budgets by sector or other area should provide:

- (1) Actual expenditures in the most recently completed Fiscal Year;
- (2) Appropriated Grant amounts and estimated expenditures in the current Fiscal Year;
- (3) Estimated Grant requirements for the upcoming Fiscal Year, including a detailed breakdown of personnel expenditures and compensable staff years, travel and other objects;
- (4) Grant objectives, specific performance indicators and assessment methods for each sector or area, including, in the case of education, programs and activities supported by the Supplemental Education Grant.

- (5) Funds provided to each sector or other area in the current and upcoming Fiscal Years by United States Federal programs, international donors and local or national governments; and
 - (6) Any available planning estimates for ensuing Fiscal Years.
- (c) Changes to Grant priorities or performance goals of the Government of the Republic of the Marshall Islands during the course of the Grant year shall have the concurrence of the Government of the United States.
- (d) In accordance with section 215 of Title Two of the Compact, as amended, the Government of the Republic of the Marshall Islands shall prepare and submit an Annual Report in February of each year to the President of the United States on the use of Grant assistance and other assistance provided by the Government of the United States during the previous Fiscal Year, and on the progress of the Republic of the Marshall Islands in meeting mutually agreed program and economic goals.
- (e) The Government of the Republic of the Marshall Islands shall develop and submit an infrastructure development and maintenance plan ("IDMP") to the Government of the United States for review. The IDMP may be included as part of the MTBIF. Projects may be phased over two or more years. The Government of the Republic of the Marshall Islands shall maintain and update a list of integrated priorities for new and reconstructed capital infrastructure and cost requirements in conjunction with its annual budget process. This project list and any revision thereto shall be submitted to the Government of the United States. Insofar as Grant funds are involved, the IDMP shall be subject to the concurrence of the Committee.

2. Annual Budget Consultation:

- (a) The Government of the United States shall evaluate the proposed Grant budgets of the Government of the Republic of the Marshall Islands to ascertain consistency with the funding requirements of the Compact, as amended, and its related agreements, the appropriateness of performance objectives and indicators, and the adequacy of expenditures in achieving stated purposes. Upon the completion of the review, the Government of the United States and the Government of the Republic of the Marshall Islands shall confer to discuss any need for special terms or conditions and to make adjustments to the annual Grant budgets or implementation plans as may be appropriate prior to the awarding of Grants. *This consultation shall occur before the meeting of the Committee but not later than 30 days after the receipt of the implementation plans and proposed budgets by the Government of the United States.*
- (b) The Committee shall receive and review the progress reports and annual proposed budgets and implementation steps and strategies of the Government of the Republic of the Marshall Islands, and approve Grant allocations no later than 30 days before the beginning of the Fiscal Year. Consistent with the provisions set forth in Article III of this Agreement, the Committee may establish special Grant

terms and conditions or other actions it deems appropriate to help the Government of the Republic of the Marshall Islands meet the stated goals and objectives of the Compact, as amended.

3. Notification of Grant Acceptance:

(a) The Government of the United States shall forward official Grant award notices to the Government of the Republic of the Marshall Islands no later than October 1 of each year.

(b) Return of signed Grant awards by the President of the Republic of the Marshall Islands shall signify acceptance of the funding amounts and any Grant terms and conditions that may be attached to the sector or other Grants.

Article VI
Post-Award Requirements

1. Financial Administration:

(a) Standards for Financial Management Systems:

(1) The Government of the Republic of the Marshall Islands shall expend and account for funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the Government of the Republic of the Marshall Islands, as well as its Sub-Grantees and cost-type contractors, shall be sufficient to:

- (i) Permit preparation of reports required by this Agreement and the Compact, as amended, and,
- (ii) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in compliance with the provisions of the Compact, as amended, and applicable agreements.

(2) The financial management systems used by the Government of the Republic of the Marshall Islands shall meet the following standards:

- (i) Financial Reporting. Accurate, current, and complete disclosure of the financial results of United States funded activities shall be in accordance with the reporting requirements of the Grant or Sub-Grant.
- (ii) Accounting Records. Accounting records shall adequately identify the source and application of funds provided for all Grant activities. These records must contain information pertaining to awards and authorizations, Obligations,

unobligated balances, assets, liabilities, outlays or expenditures, and income.

- (iii) Internal Control. The system shall maintain effective controls and accountability for all Grant and Sub-Grant cash, Real Property and personal property, and other assets to safeguard and ensure uses are solely for authorized purposes.
- (iv) Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Grant or Sub-Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant terms and conditions. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (v) Allowable Cost. Applicable cost principles and Grant terms shall be followed in determining the reasonableness and allowability of costs. An Indirect Cost rate may not be charged against funds provided pursuant to the Compact, as amended.
- (vi) Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, Contract and Sub-Grant award documents, and other financial data.
- (vii) Cash Management. Compact payments shall be made in accordance with Article IV of this Agreement. To the extent that the Government of the Republic of the Marshall Islands awards Sub-Grants to local governments or other entities, it shall establish reasonable procedures to ensure the timely receipt of reports on cash balances and cash disbursements to enable the preparation of complete and accurate cash transactions reports.
- (viii) The Government of the United States may review the adequacy of the financial management system of any recipient of financial assistance provided pursuant to the Compact, as amended, at any time.

(b) Financial Reports:

- (1) Quarterly Financial Reports. The Government of the Republic of the Marshall Islands shall provide the following financial reports each fiscal quarter to the Government of the United States. These

reports will be used to monitor the general budget and fiscal performance of the Government of Republic of the Marshall Islands and to monitor disbursement or outlay information for each sector or other Grant.

- (i) The Government of the Republic of the Marshall Islands shall submit the following reports 30 days after the end of each fiscal quarter: (1) a statement of revenues and expenditures for governmental fund types, and (2) a comparison of budget and actual expenditures by function for governmental fund types.
 - (ii) The quarterly report for all Operational Grants shall contain a budget execution report for each function and include major offices, cost centers and budget activities.
 - (iii) For all Grants provided pursuant to the Compact, as amended, the Government of the Republic of the Marshall Islands shall submit a quarterly financial status report on form SF-269 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-269") and a quarterly federal cash transactions report on form SF-272 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-272"). The Government of the Republic of the Marshall Islands may use the Federal forms available for this purpose or, as mutually agreed, provide the information in an alternative format.
- (2) Annual Financial Report(s). The Government of the Republic of the Marshall Islands shall submit a final cash transactions report for each sector or other Grant 90 days after the end of the funding period. For Operational Grants, the purpose of this report is to establish the amount of unobligated Grant funding that will carry over to subsequent Fiscal Years.
 - (3) The Government of the United States may extend the due date of any financial report upon receiving a justified request from the Government of the Republic of the Marshall Islands.
 - (4) Accounting Basis. The Government of the Republic of the Marshall Islands shall report on a cash or accrual basis consistent with its own policies. Provided the information is not changed in substance, the format of the report may be adapted when reporting is accomplished with the aid of automated data processing Equipment.

(c) Period of Availability of Grant Funds:

- (1) Funding for each Grant, other than Grants for infrastructure and other Grants that are not Operational Grants, shall generally be available for one year. Funding for infrastructure and projects that are not funded by Operational Grants shall be available for obligation for the time period described in the terms and conditions of the Grants.
- (2) The Government of the Republic of the Marshall Islands shall liquidate all Obligations incurred under a Grant not later than 90 days after the end of the funding period or as otherwise mutually agreed, to coincide with the submission of the final annual cash transactions report.

(d) Changes, Property, and Sub-Awards:

- (1) Budget Changes. Re-allocation of funds from one sector to another sector shall not be permitted during the course of the Grant year. Re-allocation of Supplemental Education Grant funds for activities outside of those approved to be supported by that Grant is prohibited. Except as set forth below, the Government of the Republic of the Marshall Islands may reprogram up to 15 percent of the total budget or \$500,000, whichever is less, within either an approved Sector Grant or the Supplemental Education Grant to meet unanticipated requirements and make limited program changes to approved projects. However, unless waived by the Government of the United States, the following changes in budgets and projects during the course of the Grant year shall require prior written approval of the United States:
 - (i) Budget Changes in Non-Construction Projects. Except as stated in the Grant document, the Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following changes is anticipated: (1) any revision that would result in the need for additional funding over and above the original award, and (2) cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities that exceed or are expected to exceed the threshold described above in sub-clause (1) of clause (d).
 - (ii) Construction Projects. The Government of Republic of the Marshall Islands shall obtain prior written approval for any budget revision that would result in the need for additional funds.

(2) Programmatic Changes. The Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following actions is anticipated:

- (i) Any revision of the scope or performance objectives of the Grant or infrastructure project;
- (ii) The need to extend the period of funding availability;
- (iii) Changes in key persons specifically named in a Grant award; and,
- (iv) The contracting out or otherwise obtaining the services of a third party to perform non-construction related activities that are central to the purposes of the Grant. This approval is in addition to the requirements described below in clause (j) but does not apply to the procurement of Equipment, Supplies, and general support services.

(e) Real Property:

(1) Title or Long-Term Use Rights. Subject to the Obligations and conditions set forth in this section, title or long-term use rights to Real Property acquired with funds provided pursuant to the Compact, as amended, shall vest upon acquisition in the Government of the Republic of the Marshall Islands.

(2) Use. Except as mutually agreed by the Government of the Republic of the Marshall Islands and the Government of the United States, Real Property acquired with funds provided pursuant to the Compact, as amended, shall be used as long as needed for the purposes originally authorized, and the Government of the Republic of the Marshall Islands shall not dispose of or encumber Real Property titles or other interests.

(3) Disposition. When Real Property is no longer needed for the originally authorized purpose, the Government of the Republic of the Marshall Islands and the Government of the United States shall consult on the choice of one of the following disposition alternatives:

- (i) Retention of Title or Long-Term Use Rights. If the Real Property will continue to be used for a public purpose, the Government of the Republic of the Marshall Islands shall retain title or long-term use rights.
- (ii) Sale of Property. The Government of the Republic of the Marshall Islands may sell the property, if owned, and reimburse the Compact accounts held by the Government of the United States. The amount due shall be calculated by

applying the percentage of the original price paid by United States funding to the proceeds of the sale after deducting any actual and reasonable expenses. Any funds reimbursed shall be considered unobligated funding under the Compact, as amended, to be reallocated to sector or other Grants.

- (iii) Transfer of Title. The Government of the Republic of the Marshall Islands may transfer title to a third party approved by the Government of the United States.

(f) Equipment:

- (1) Title. Subject to the Obligations and conditions set forth in this section, title to Equipment acquired with funds provided pursuant to the Compact, as amended, will vest upon acquisition in the Government of the Republic of the Marshall Islands.
- (2) Consistent with paragraphs (3) through (5) of this clause (f), the Government of the Republic of the Marshall Islands shall use, manage and dispose of Equipment acquired with funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures.
- (3) Use:
 - (i) Equipment shall be used in the program or project for which it was acquired as long as needed. When no longer needed for the original purpose, the Equipment may be used in other activities currently or previously supported by an agency of the Government of the United States.
 - (ii) Equipment acquired with Grant funds provided pursuant to the Compact, as amended, may be used by other projects or programs currently or previously supported by the Government of the United States, provided such use does not interfere with the work on activities funded pursuant to the Compact, as amended, for which such Equipment was originally acquired.
 - (iii) Unless specifically permitted by Grant terms and conditions, Equipment acquired with funds provided pursuant to the Compact, as amended, to provide services for a fee may not be used to compete unfairly with private companies that provide equivalent services.
- (4) Management Requirements. Procedures for managing Equipment, whether acquired in whole or in part with funds provided pursuant to the Compact, as amended, shall meet the following minimum requirements:

- (i) Property records shall be maintained which include: (1) a description of the property, (2) a serial number or other identification number, (3) the source of property, (4) who holds title, (5) the acquisition date and cost of the property, (6) the percentage of United States funding used in the purchase, (7) the location, use and condition of the property, and (8) any ultimate disposition data including the date of disposal and sale price.
 - (ii) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (iii) A control system shall be developed to ensure adequate safeguards against property loss, damage or theft. Any loss, damage, or theft shall be investigated.
 - (iv) Adequate maintenance procedures shall be developed to keep the property in good condition.
 - (v) If the property is sold, proper sales procedures shall be established to ensure the highest possible return.
- (5) Disposition. When Equipment acquired with funds provided pursuant to the Compact, as amended, is no longer needed for the original project or program, or for other activities supported by other agencies of the Government of the United States, it shall be disposed as follows:
- (i) Items of Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Government of the United States.
 - (ii) Items of Equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold. The Government of the Republic of the Marshall Islands may sell the property at fair market value and reimburse the Compact accounts held by the Government of the United States. Any such funds shall be considered unobligated funding for reallocation to sector or other Grants.
- (g) Supplies. Title to Supplies acquired with funds provided pursuant to the Compact, as amended, will vest, upon acquisition, in the Government of the Republic of the Marshall Islands.
- (h) Sub-Awards to Debarred and Suspended Parties. The Government of the Republic of the Marshall Islands shall not award funds received pursuant to the Compact, as amended, to any party which is debarred, suspended or otherwise excluded from and ineligible for participation in United States assistance

programs under Executive Order 12549, "Debarment and Suspension," issued by the President of the United States on February 18, 1986.

(i) Program Income. For the purposes of this Agreement, "Program Income" shall include: (1) earnings from the use or rental of Real Property or personal property acquired with funds provided pursuant to the Compact, as amended; (2) the sale of commodities or items fabricated under a sector or other Grant; and (3) fees assessed in the areas of public utilities, health services and any other activities provided by government or government-owned enterprises that are supported by sector or other Grants.

- (1) The Government of the Republic of the Marshall Islands shall seek opportunities to earn Program Income to defray government program costs and shall establish fees for services in the areas of public utilities, health services, and any other government-owned or operated enterprises to comply with the terms and conditions of certain sector or other Grants.
- (2) Unless otherwise authorized by the Grant, Program Income shall remain with the programs in which they are earned, to offset Operational Costs and capital costs not covered by funds provided pursuant to the Compact, as amended.

(j) Procurement:

- (1) The Government of the Republic of the Marshall Islands may use its own procedures for procurement, whether done by government or its Sub-Grantees, provided that they meet the standards identified in this section.
- (2) The Government of the Republic of the Marshall Islands shall maintain a Contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their Contracts or purchase orders.
- (3) A written code of conduct shall be maintained by the Government of the Republic of the Marshall Islands to govern the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Government of the Republic of the Marshall Islands shall participate in the selection, award, or administration of a Contract supported by funds provided pursuant to the Compact, as amended, if a conflict of interest, real or apparent, is involved.
 - (i) Officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

- (ii) The Government of the Republic of the Marshall Islands may set minimum rules where the financial interest is not substantial or the gift is unsolicited and of nominal intrinsic value.
 - (iii) To the extent permitted by law or regulations of the Government of the Republic of the Marshall Islands, the standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations.
- (4) Awards shall be made only to contractors who possess the ability to perform responsibly and successfully under the terms and conditions of a proposed procurement. Selection must consider contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (5) Records shall be maintained with sufficient detail to document the history of a procurement, including but not limited to the rationale for and method of procurement, the selection of Contract type, contractor selection or rejection, and the basis for the Contract price.
- (6) The Government of the Republic of the Marshall Islands shall use time and material type Contracts only after determining that no other Contract is suitable and if the Contract includes a ceiling price that the contractor exceeds at its own risk.
- (7) The Government of the Republic of the Marshall Islands shall be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include but are not limited to source evaluation, protests, disputes, and claims.
- (8) The Government of the Republic of the Marshall Islands shall have protest procedures to handle and resolve procurement disputes.
- (9) Competition:
 - (i) All procurement transactions shall be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) requiring unnecessary experience and excessive bonding; (3) noncompetitive pricing practices between firms or between affiliated companies; (4) making noncompetitive awards to consultants on retainer; (5) organizational conflicts of interest; (6) specifying a "brand

name" instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process.

- (ii) Geographic preferences shall be allowed only if its application leaves an appropriate number of qualified firms to compete in the contract, and if there is no discrimination against race, religion or national origin.
- (iii) Written selection procedures shall govern procurement. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features that unduly restrict competition.
- (iv) The Government of the Republic of the Marshall Islands shall ensure that all pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

(10) Methods of Procurement:

- (i) Procurement By Small Purchase Procedures. Small purchase procedures are those relatively simple and informal methods for securing services, Supplies, or other property that do not cost more than \$100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
- (ii) Procurement By Sealed Bids. Sealed bids are those bids that are publicly solicited for which a firm-fixed-price Contract is awarded to the lowest bidder who meets all the terms and conditions of the invitation. The sealed bid method is the preferred method for procuring construction, if the conditions of sub-clause (10)(iii) apply.
- (iii) The following conditions shall apply to sealed bidding: (1) a complete, adequate, and realistic specification or purchase description must be available; (2) two or more responsible bidders must be willing and able to compete effectively and for the business; (3) the procurement must lend itself to a firm fixed price contract; and (4) the selection of the successful bidder can be made principally on the basis of price.